



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Adrian Supply Co.--Reconsideration

**File:** B-242819.4; B-242819.5

**Date:** October 9, 1991

Bob Stormberg for the protester,  
Scott Riback, Esq., and James A. Spangenberg, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Request for reconsideration is denied where protester merely repeats arguments previously made and expresses disagreement with our prior decision.
2. New protest based on information obtained pursuant to a Freedom of Information Act request is not timely because the protester did not diligently pursue the information in that the information could have been obtained 2 months earlier had it been requested under the document request provisions of the Bid Protest Regulations during the pendency of a prior protest.

### DECISION

Adrian Supply Co. requests reconsideration of our decision in Adrian Supply Co.--Recon., B-242819.3, July 17, 1991, 91-2 CPD ¶ 64, in which we affirmed our prior dismissal, as untimely, of Adrian's protest of the cancellation of invitation for bids No. F29650-90-B-0039 by the Department of the Air Force. We dismissed Adrian's initial protest because the record showed that it was not filed within 10 working days of when Adrian knew of its basis for protest, as required by our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2) (1991). Adrian also has filed a new protest, alleging that the agency's cancellation of this solicitation reflects bad faith.

We deny the request for reconsideration because the request provides no basis for reconsidering our prior decision. We dismiss Adrian's new protest as untimely.

In the reconsideration request, filed August 9, 1991, the protester in essence repeats arguments it made previously and expresses disagreement with our decision. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). The repetition of arguments made during our reconsideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Adrian's new protest, filed August 14, 1991, is based upon the firm's receipt, on August 1, of a copy of a competitor's bid in response to a Freedom of Information Act (FOIA) request. In this regard, Adrian argues that it was compelled to file the FOIA request on June 3 in order to obtain a copy of its competitor's bid because the document was not included with the agency's report addressing the merits of the protest, which was submitted to our Office on May 23.<sup>1/</sup> According to Adrian, its examination of the competitor's bid shows that the reasons advanced by the agency for canceling the requirement, for an electrical substation, are groundless and have been advanced in bad faith.

We decline to consider this protest because it was not timely filed within 10 days of when Adrian knew or should have known the facts on which it bases this protest. Protesters are required to diligently pursue information that may reveal additional grounds of protest. Diemaster Tool, Inc., B-238877.3, Nov. 7, 1990, 91-1 CPD ¶ 162. The requirement of diligent pursuit of relevant information imposes a duty upon protesters to pursue that information in a reasonably expedient method considering the circumstances. Here, the protester had available to it the document request provisions of our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(f)), which allow a protester an opportunity to obtain documentary evidence that it believes is relevant in light of the agency report. If that section had been used by Adrian at the time of its receipt of the agency report, Adrian should have been able to obtain a

---

<sup>1/</sup> This agency report, responding to the merits of Adrian's protest, was submitted in response to our request when Adrian filed a request for reconsideration on April 10, 1991, of our April 1 dismissal, as untimely, of Adrian's initial protest of the cancellation. We affirmed the dismissal on July 17.

copy of its competitor's bid within 7 working days.<sup>2/</sup> Adrian made no request for a copy of its competitor's bid under the Bid Protest Regulations.<sup>3/</sup> Instead, it merely complained about its nonreceipt of the bid in its comments on the report filed with our Office on June 10<sup>4/</sup> and, without advising our Office, filed a FOIA request with the agency on June 3.

Section 21.3(f), of course, is not a substitute for FOIA; it only provides a procedural tool that protesters can use to obtain (or at least have placed before us) relevant documents in addition to those furnished initially by the agency. Therefore, if a protester seeks a document that is not relevant to the protest, the protester cannot avail itself of section 21.3(f); it must instead pursue the document under FOIA.

In this case, we think that Adrian could and should have obtained its competitor's bid under section 21.3(f). Although the protest issue was the propriety of the cancellation, the Air Force, in its protest report, justified the cancellation in part on the solicitation's failure to provide for the evaluation of load loss.<sup>5/</sup> In making this argument, the Air Force referenced the competitor's bid as it related to load loss. Thus, at that time (as further evidenced by Adrian's

---

<sup>2/</sup> Under section 21.3(f), a protester may file a supplemental document request within 2 working days of receiving the agency report. The agency must then furnish the documents to our Office and to the parties within 5 working days (unless, as is not the situation here, there is a question of releasability, in which case we decide upon the releasability of the documents in no more than 5 additional working days).

<sup>3/</sup> While Adrian alleges that the agency was "required" to provide a copy of its competitor's bid with its report, we do not think that, within the context of this particular case, the agency clearly was required to provide with the report copies of the bids that had been submitted, since the issue was the propriety of the agency's cancellation decision based on the determination that the solicitation did not reflect the agency's actual requirements.

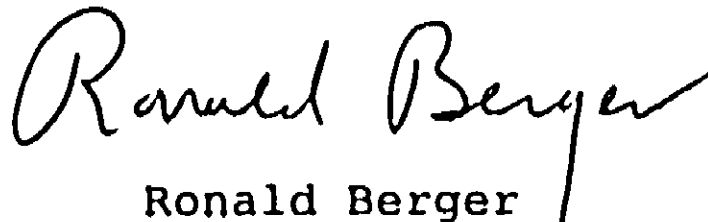
<sup>4/</sup> To the extent this complaint was a request for this document, it was not timely made under section 21.3(f).

<sup>5/</sup> Load loss refers to the difference between the power flowing into a transformer and that flowing out. The Air Force was concerned that over a period of time, a transformer with a greater load loss than another transformer could be more costly to the government, notwithstanding the first transformer's lower direct cost.

FOIA request), the competitor's bid became relevant to the protester's concerns regarding the propriety of the cancellation, such that Adrian should have sought to obtain the bid under section 21.3(f).

Adrian, in not doing so but instead pursuing the information under FOIA, assumed the risk that more than 7 days would elapse before it received the requested document and that we would not be able to consider it in reaching a decision on the protest. As indicated above, Adrian did not obtain the information on which it bases this protest until August 1, when it could have obtained the information in early June had it requested it under section 21.3(f). Under the circumstances, we think Adrian did not diligently pursue the information on the basis of which it now seeks to protest anew. We therefore view Adrian's new protest as untimely.

The request for reconsideration is denied and the protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the printed name and title.

Ronald Berger  
Associate General Counsel